IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2470 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRINCIPAL B.J.V.M.COMMERCE COLLEGE

Versus

GOHEL ARVINDBHAI MANGALBHAI

Appearance:

1. Special Civil Application No. 2470 of 1999

MR DC DAVE for Petitioner No. 1

..... for Petitioner No. 2

MR PRADEEP PATEL for Respondent No. 1

Mr. N.D. Gohil, AGP for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 27/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Shivang Shukla for Mr. D.C. Dave for the petitioner; Mr.Joshi for P.J.Patel, learned advocate for respondent No. 1 and Mr. N.D. Gohil, learned AGP for respondent NO. 2/3.

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 28.1.1999 passed by the Gujarat Affiliated Colleges Services Tribunal at Exh.C to this petition in Application No. 12 of 1995 which was moved by the present respondent no. 1 before the tribunal wherein the tribunal has directed the present petitioner to absorb the present respondent no.1 as heir of deceased employee of the petitioner namely Shri MM Gohel as Class III or Class IV employee and to appoint him accordingly and has, thus, granted the application of the present respondent no.1 which order is under challenge in this petition by the petitioner.

This Court has, by order dated 23.4.1999, admitted the petition by issuing rule thereon and has stayed operation of the order of the tribunal.

Learned advocate Mr. Shukla appearing for Mr. Dhaval C. Dave for the petitioner has submitted that the tribunal has committed gross error in allowing the application; according to him, the tribunal is not having jurisdiction under section 8 of the Gujarat Affiliated Colleges Services Tribunal Act, 1982. Learned advocate Mr. Shukla has also submitted that the disputes to be decided by the tribunal have been specified in section 8 of the said Act which provides that where there is any dispute between the Manager of a college and any college employee, which is connected with the conditions of service of such college employee, the manager or, as the case may be, the college employee may make an application to the Tribunal for the decision of the dispute. Relying upon the aforesaid provisions of section 8 of the said Act, he submitted that the dispute before the tribunal was not the dispute between the employee and the management and, therefore, it was not covered by section 8 of the said Act and, therefore, the tribunal has erred in entertaining the application. He also submitted that even otherwise, looking to the income of the family of the respondent no.1, the respondent no.1 was not entitled for such an appointment on compassionate ground and yet the tribunal entertained and allowed it and in doing so, the tribunal has erred which is required to be corrected by this court. According to his submissions, the tribunal has erred in issuing directions to the

petitioner to appoint the respondent no. 1 on compassionate ground. According to him, at the most, the tribunal can direct for considering or reconsidering his case for appointment on compassionate ground but directions for his appointment on compassionate ground were beyond the powers and authorities of the tribunal and, therefore, this court should interfere with such an erroneous order and directions of the tribunal. According to him, such directions were de-hors the rules and, therefore, impugned judgment and order of the tribunal is required to be quashed and set aside by this court.

On the other hand, learned advocate Mr. Patel appearing for the petitioner has submitted that the tribunal has not committed any jurisdictional error in issuing the directions in question and, therefore, there is no need to interfere with such an order. He also submitted that it was a case of appointment of the heir of the deceased employee of the petitioner management on compassionate ground and, therefore, in a way, it could be considered to be a dispute between the management and the deceased employee through his heir and, therefore, the tribunal was right in entertaining such an application; the tribunal was also right in allowing such an application by issuing directions for appointment of respondent no.1 on compassionate ground. Thus, learned advocate Mr. Patel has supported the order in question.

I have considered the submissions made by the learned advocates for the parties. I have also minutely perused the order in question passed by the tribunal. I have also gone through the provisions of section 8 of the said Act. Bare perusal of section 8 of the said Act makes it clear that where there is any dispute between the Manager of a college and any college employee, which is connected with the conditions of service of such college employee, the manager or, as the case may be, the college employee may make an application to the Tribunal for the decision of the dispute. In view of such provisions of section 8 of the Act, it is the submission of Mr. Shukla that it is not a dispute between the management and its employee and, therefore, tribunal has no jurisdiction to entertain and decide such an application. However, according to my opinion, the respondent no. 1, being the heir and legal representative of the deceased employee of the petitioner, was claiming appointment on compassionate ground on the basis of the policy of the petitioner to offer such appointments on compassionate grounds. Thus, in substance and reality, in a way, it was a dispute

between the manager of the college and the employee. However, the section itself is not clear in that regard as to whether the deceased employee of the college is covered by section 8 or not and whether the heir and legal representative of the deceased employee of the college can raise any such dispute or not. The second contention is in respect of income part and it is the submission that the tribunal has not taken into account properly this aspect of the matter. In that regard, it is necessary to note the observations made by the tribunal in respect of the contention raised by Mr. Shukla before this Court. Findings of the tribunal are based on the Government Resolution dated 8.5.1996; present respondent no.1 is covered by the scheme of the aforesaid GR dated 8.5.1996. The tribunal has observed that the college management has appointed a person in view of the interview with effect from 23.1.1995 and has given application for permission for appointment of a selected candidate for the post of peon or Laboratory Hamal and, thus, according to the tribunal, there was contradictory statements made by the college management and, therefore, it was observed by the tribunal that if the original respondents no.1 and 2 have appointed a person pursuant to the advertisement, then, there is no necessity for them to file another application seeking permission for appointment of selected candidates for the post of peon or laboratory hamal on 21st February, 1997. Since no one has remained present before the tribunal after 21.2.1997, the tribunal was of the view that the petitioners were not inclined to proceed with the matter and, therefore, the tribunal after examining the policy of appointment on compassionate ground as per the aforesaid GR, was of the view that the respondent no.1 is covered by the said GR. The tribunal has also considered the income of the family of the respondent no.1 and after considering all these aspects, has passed the order in question.

It is necessary to note that at the time when the advocate for respondent No.1 Mr. Oza had argued the matter before the tribunal, at that time, no one remained present on behalf of the present petitioner before the tribunal. No submissions were made on behalf of the petitioner before the tribunal. The contention raised by the petitioner about jurisdiction in its written statement filed before the tribunal has not been argued before the tribunal. Mere pleadings are not enough but same are required to be substantiated by way of positive evidence and submissions during the course of hearing. No efforts were made by the petitioner before the tribunal. Apart from the said facts, just to examine the

said legal contention raised by the petitioner before this court, this court has considered the same. Relevant section 8 is reproduced as under:

> 8. Dispute to be decided by Tribunal.- Where there is any dispute between the Manager of a college and any college employee, which is connected with the conditions of service of such college employee, the manager or, as the case may be, the college employee may make an application to the Tribunal for the decision of the dispute."

From the bare perusal of section 8 of the said Act, it appears that if any dispute between the manager of a college and any college employee which is connected with the condition of service of such college employee, then, such application be filed before the Tribunal. In light of the above position, if the facts of the present case are examined, then, it would appear that the father of the respondent was a college employee, died during the course of employment. The condition of service which applied to the employee of college was to the effect that in case if any employee died during the course of employment, then, according to GR dated 8.5.1996, one dependent of such college employee is entitled for being appointed on compassionate ground. This is the scheme of the petitioner college and is a condition of service applicable to the employees of the petitioner college. Therefore, according to the said service condition, the present respondent no.1 being the dependent of the deceased employee of the petitioner college applied for appointment on compassionate ground in view of the death of his father during the course of his employment in the petitioner college. Said application of the petitioner was rejected by the petitioner. Therefore, in reality, right of the deceased employee has been examined by the tribunal as to whether the son or dependent of the deceased employee is entitled for appointment on compassionate ground or not as per the scheme or service condition of the petitioner. Thus, in reality and substance, this condition of service was examined by the tribunal. Therefore, the tribunal has jurisdiction to decide the dispute between the manager of the College and the college employee and in substance and reality, it was a dispute between the manager of the college and the college employee. It is not clear from the section that the deceased employee of the college is not covered by section 8 of the Act. Actually, legal right based on the service condition of the petitioner college was examined by the tribunal to the effect that the respondent no.1 being dependent of the deceased employee of the

petitioner college is entitled for appointment on compassionate ground and in view of that, it was within the jurisdiction of the tribunal as per section 8 of the Act itself.

Similar question arose before this court in the matter of GSRTC versus Kalubhai H. Vanand reported in 2002 Lab IC 1817 wherein also similar provision in settlement being condition of service was examined by this court. The question as to whether the dispute relating to compassionate appointment could be considered as industrial dispute or not. After considering the settlement, it has been held by this Court (Coram : D.H. Waghela,J.) that it can be raised by the beneficiary/dependent of an employee though he is not workman under section 2(s) of the ID Act, 1947. In para 3 of the said decision, it has been observed by this Court as under:

"3. A preliminary jurisdictional issue was sought to be raised for the first time by the learned advocate Mr. Munshaw for the petitioner by submitting that the beneficiary of the impugned award was never a workman of the petitioner and, therefore, any dispute involving his employment or non employment could not be termed as an 'industrial dispute' nor was he covered by the definition of 'workman' as defined in section 2 (2) of the Industrial Disputes Act, 1947.The submission was, therefore, that both the reference and its adjudication was incompetent and without jurisdiction. This argument can hardly stand beyond the facile reading of the Act. Although the beneficiary of the a ward was obviously and admittedly not a workman within the definition of the Act, it cannot take away the dispute from the definition of 'industrial dispute' which is defined as under in S.2(k).

'Sec. 2(k) - 'industrial dispute' means any dispute or difference between employers and employers, or between the employers and workmen or between workmen and workmen, which is connected with employment or non employment or the terms of employment or with the conditions of labour, of any person.'

A careful reading of the above definition would reveal that any dispute between the employer and

> the workmen connected with the employment or non employment of any person can be an industrial dispute. The dispute in the present case having been raised and epoused by the Trade Union of workmen, there was nothing illegal or incompetent about its reference and its adjudication by the Tribunal to which it was referred."

Therefore, according to my opinion, considering section 8 of the said Act as well as the ratio laid down by this Court in the aforesaid decision, dependent of the deceased employee of the petitioner college was demanding appointment on compassionate ground as per the service conditions based on the aforesaid GR and, therefore, it is covered by section 8 of the said Act and therefore, tribunal has jurisdiction to entertain the same and was right in entertaining the same. Therefore, the contention raised by the petitioner before this court that the tribunal was not having the jurisdiction to entertain the application of respondent no.1 cannot be accepted and the same is, therefore, rejected.

According to my opinion, the father of respondent no.1 died on 14.5.1992 and thereafter, request for appointment on compassionate ground as per the aforesaid GR was immediately made by the respondent no.1 which was not considered by the college management for sufficiently long period and, therefore, the respondent no.1 approached the tribunal. According to my view, it could be considered to be a dispute of deceased employee of the college management and the college management and the tribunal was right in entertaining the application. According to my opinion, since sufficient time has gone after the death of the father of respondent no.1, there was no meaning and purpose in directing the college management to consider the case of the respondent no.1 for appointment on compassionate ground. Therefore, the tribunal was right in issuing the directions in question for appointment of respondent no.1 on compassionate ground and in doing so, the tribunal has not committed any jurisdictional error or procedural irregularity and, therefore, there is no substance in this petition and the same is required to be dismissed. I am of the opinion that ultimately, we have to see whether the impugned order mets justice or not. Learned advocate Mr. Shukla has not been able to point out as to how the findings recorded by the tribunal are without jurisdiction or how the tribunal has committed jurisdictional error. There is, therefore, no substance in this petition and the same is required to be dismissed. Since the stay was operating against the directions issued by the Tribunal,

the respondent No. 1 has remained without employment on compassionate ground till this date. Therefore, I am of the opinion that the respondent no.1 is entitled for the salary from the date of the order of the tribunal till the date of his actual appointment as directed by the tribunal.

In the result, this petition is dismissed. Interim relief is vacated. Rule is discharged.

Learned advocate Mr. Patel appearing for respondent no.1 submits that the respondent no.1 is claiming for his appointment on compassionate ground since long after his father expired in the year 1992. The directions issued by the tribunal were stayed by this court while issuing the rule in this matter and, therefore, the respondent no.1 without job and, therefore, some suitable directions may be issued so that the respondent no.1 may get appointment on compassionate ground.

Considering the request made by the learned advocate Mr. Patel, and also considering the fact that otherwise, the respondent no.1 cannot claim any wages for the past period, the petitioner is directed to comply with the directions of the tribunal by making appointment of the respondent no.1 on compassionate ground within one month from the date of receipt of this order and to pay salary to the respondent from the respondent from the date of the order of the tribunal 28.1.1999 till the date of actual appointment given to the respondent by the petitioner.

Dt.27.8.2003. (H.K. Rathod,J.)